

UNITED STATES OF AMERICA,  
Plaintiff,

RAYMOND MICHAEL FOAKES,  
Defendant.

Hon. William H. Alsup  
United States District Court

Mr. Foakes asks the Court to sentence him pursuant to the terms of the Plea Agreement, which call for him to serve a term of 70 months in Federal Prison, to be followed by a term of supervised release of 3 years. It is agreed by the parties that this represents an appropriate and reasonable sentence in this matter.

## II. BACKGROUND

Mr. Foakes comes to this Court to be sentenced at the age of 48. He is the father of two young children, whom he supported, and with whom he resided until the date of his arrest in this case. The proposed sentence of 70 months will have an impact on Mr. Foakes' life that is difficult to exaggerate. The separation from his children during these formative years will be difficult to say the least. This sentence also represents the longest Prison sentence the defendant has ever served.

Mr. Foakes well knows that this Court is familiar with his background, given the fact that this Court held a hearing regarding an earlier Form 12. As a consequence of that hearing, Mr. Foakes served the 5 months imprisonment, as well as an additional 5 months in home detention. Since that time, Mr. Foakes, who has struggled with drug addiction for years, has maintained his sobriety, and has kept himself gainfully employed as a heavy equipment operator, commuting 170 miles per day for his job.

Mr. Foakes realizes that it is difficult to persuade the Court that he was making earnest efforts to distance himself from criminality when he comes here facing a new Form 12 for violating his non-association condition; and for that reason he wishes to highlight some mitigating factors.

The Form 12 charges Mr. Foakes with associating with Joseph Heiney, a man that United States Probation considers a Hell's Angels associate and a felon. Mr. Foakes is aware that any association with any felons, or individuals connected to the Hell's Angels Motorcycle Club (HAMC) will be presumed to be for the purpose of committing criminal acts. However, in this case that presumption is simply not true. This conclusion is supported by two facts: First, that Mr. Heiney's felony has been expunged by the Superior Court of California, (as shown by the documents collectively marked as Exhibit A, and attached hereto); and second, that Mr. Foakes associated with Mr. Heiney, while Mr. Foakes was on a family trip to Disneyland with his employer, Ronald Van Airsdale, in Disneyland. Mr. Heiney, a close friend of Mr. Van Airsdale, joined the two men and their families. Mr. Foakes is not disputing that this association was a violation of his probation, but wishes to highlight these circumstances which are certainly indicative of the fact that in no way was this association for the purpose of criminal conduct.

### III. DISCUSSION

The offense conduct in this case is accurately summarized in the Pre-Sentence Report, and do not bear repetition here.

The defendant does not dispute the calculations of United States Probation Officer Cheryl L. Simone, and agrees that his offense conduct yields an adjusted offense level of 20 (23 less 3 points for acceptance of responsibility). He also agrees that his criminal history category is appropriately calculated at VI.


The defendant asks the Court to consider that he has fully accepted responsibility. He also has done everything possible to facilitate the adjudication of this matter which is cumbersome to say the least. His efforts in that regard are well articulated in the Government's Sentencing Memorandum. The defendant joins the government in urging the Court to accept the sentence of 70 months, as agreed to by the parties. It is the view of the parties that this represents an appropriate and reasonable sentence given the circumstances in this case, and the circumstances surrounding the rapid acceptance of responsibility.

### IV. CONCLUSION

Mr. Foakes respectfully requests that the court sentence him in accordance with the submitted plea agreement, to a term of imprisonment of 70 months.

Dated: January 9, 2012

Respectfully Submitted,

  
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ANTHONY J. BRASS  
Attorney for Defendant  
RAYMOND MICHAEL FOAKES

# Exhibit A

## Defendant Status

Name: HEINEY, JOSEPH DONALD  
Not In Custody

Criminal Justice System  
Probation Number:

Case	Next Court Appearance	Pending Charges?	On Other Charge	Status	Warrant
SCR-460170				DISM	
COT-020679				NFIL	
MCR-390912				SENT	
TCR-358820				DISM	
TCR-356102				DISM	
SCR-29708				HTOA	DISM
SC Fel Formal Prob				General Termination on 09/11/2002	
TCR-340701				SENT	
MC Misd Cond Prob				Term Expired on 02/13/2003	
MCR-259631				SENT	
MC Misd Cond Prob				Term Expired on 10/16/1997	
SCR-23117				CERT	DISM
TCR-254593				DISM	
TCR-254324				SENT	
MC Misd Cond Prob				Term Expired on 01/10/1997	
TCR-250416				SENT	
MC Misd Cond Prob				Term Expired on 01/10/1997	
MCR-250713				SENT	
SRO-963004				NFIL	
MCR-240110				DISM	

(5-Next) (6-Crt Register) (8-Charges)

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MCR-355734 CRIMINAL DOCKET Printed 9/30/2011 16:02

Docket of

DE 1 HEINEY, JOSEPH DONALD  
DOB 03/13/1976 DLN CA B3034018

Offense Date: 04/12/2000  
DA #: DAR-404734

Filed Charges

F HS 11359 Held to Answer  
F HS 11359 Dism per 1203.4 PC

F HS 11350(a) Held to Answer  
F HS 11350(a) Dismissed

Arresting Agency: SO. CO. NARCOTICS TASK FORCE Agency #: NTF-00041208  
Box Number: 88605 (MCR-355734), 105529 (SCR-29708) DA Location: 80517  
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04/13/2000 DE 1

BAIL BOND REFERENCE #CS1000275689 REC'D AND FILED IN THE AMOUNT OF  
\$5000  
CALENDAR ITEM - 04/26/2000 at 8:30am M7, BAILED TO APPEAR, FIRST  
APPEARANCE, ARRAIGNMENT

04/25/2000 DE 1

COMPLAINT FILED  
F HS 11359

F HS 11350(a)

04/26/2000 DE 1 Courtroom Minutes of Department M7

HON: F PASSALACQUA DDA: JULIA K. FREIS REP: Jennifer Roux CLK: AN  
Defendant present  
Counsel R Scott appearing generally  
Defendant handed copy of complaint  
Stipulates to arraignment  
Waives reading of complaint  
Waives further advisement of rights  
Defendant pleads Not Guilty to count I HS 11359  
Defendant pleads Not Guilty to count II HS 11350(a)  
Defendant Waived Time for Preliminary Hearing, including 10 day  
rule  
Defendant Waived Time for Preliminary Hearing, including 60 day  
rule  
Preliminary Examination set - 06/07/2000 at 9:30am M7, PRELIMINARY,  
MOTION

05/26/2000 DE 1

NOTICE OF MOTION AND MOTION FOR CONTINUANCE;MEMORANDUM OF POINTS  
AND AUTHORITIES;DECLARATION OF RICHARD S. SCOTT FILED

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06/07/2000 DE 1 Courtroom Minutes of Department M7

HON: F PASSALACQUA DDA: Carla L Claeys REP: J BURRESS CLK: AN  
Defendant present  
Counsel Richard Scott not present, M Case appearing  
Defendant Waived Time for Preliminary Hearing  
Preliminary Examination set - 07/17/2000 at 1:30pm M/, PRELIMINARY  
1050 PC Motion by defense counsel GRANTED

07/17/2000 DE 1 Courtroom Minutes of Department M7

HON: F PASSALACQUA DDA: Alexander J. McMahon REP: F SANDERS CLK: AN  
Defendant present  
Counsel Richard Scott appearing  
Preliminary Examination Held  
People call Det. Joe Raya, sworn and testified.  
Witness identifies Defendant(s).  
Stipulation as to witnesses qualifications for preliminary hearing  
purposes only  
Cross examination by counsel Case  
Cross examination by counsel Scott  
Witness steps down  
Stipulation for PX purposes only re: lab results  
People rest  
Defense counsel Case argues  
People argue  
Defendant Held to Answer to count I HS 11359 as charged  
Defendant Held to Answer to count II HS 11350(a) as charged  
Information to be filed in Superior Court by - 07/31/2000 at 9:00am  
S4, INFORMATION TO BE FILED  
Transcript by: 7/31/2000  
Reporter: F. Sanders  
BAIL TRANSFERRED TO SUPERIOR COURT; REFERENCE #CS1000275689

07/21/2000 DE 1

PERTINENT PAPERS DELIVERED TO COUNTY CLERK; RECEIPT FILED #  
SCR29708

07/24/2000 DE 1

CRIMINAL HEARING - 07/31/2000 at 9:00am S4, INFORMATION TO BE FILED  
BAIL BOND REFERENCE #CS1000275689 REC'D AND FILED IN THE AMOUNT OF  
\$5000  
BAIL TRANSFERRED FROM MUNICIPAL COURT

SCR-29708 SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

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07/31/2000 DE 1 Courtroom Minutes of Department S4

HON: Robert Boyd DDA: ALEXANDER J McMAHON REP: ROSE FERRONATO CLK: MB  
Defendant present  
Richard Scott appearing for Defendant  
INFORMATION FILED  
F HS 11359 F HS 11350(a)  
Defendant stipulates to due and proper arraignment  
Defendant waives reading of information  
Fingerprint form filed  
CONT/D TO - 08/02/2000 at 9:00am S4, PLEA, TO SET, DISPOSITION

08/01/2000 DE 1

REPORTER'S TRANSCRIPT FILED PRELIM

08/02/2000 DE 1 Courtroom Minutes of Department S4

HON: Robert Boyd DDA: ALEXANDER J McMAHON REP: ROSE FERRONATO CLK: MB  
Defendant present  
Richard Scott appearing for Defendant  
Defendant Advised of Maximum Penalties  
Defendant understands and waives each right  
Defense Counsel joins in Waiver of Rights  
Defendant pleads NO CONTEST to count I HS 11359  
CONVICTED TO COUNT I HS 11359 - PLEA OF NOLO CONTENDERE  
Court finds factual basis for plea  
Court finds Defendant knowingly, intelligently, freely and  
voluntarily waives rights  
Court makes finding of guilt  
People move to dismiss ct(s) 2 ; deemed dismissed at time of  
sentencing.  
Plea per 1192.5 PC  
People recommend plea to count 1, no immediate state prison,  
relinquish rights to money seized, computer forfeited, dismissal as  
to Cole-Smith  
Defendant stipulates to factual basis for plea  
Case Referred to Probation Department for RPO  
Referred to Probation for presentence  
CONT/D TO - 09/07/2000 at 9:00am S4, RPO/PRESENTENCE  
Report due 8-31-2000  
Defendant waives time for sentencing

08/16/2000 DE 1

REPORTER'S TRANSCRIPT FILED - CHANGE OF PLEA



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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

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09/07/2000 DE 1 Courtroom Minutes of Department 54

HON: Robert Boyd DDA: ALEXANDER J McMAHON REP: ROSE FERRONATO CLK: MB  
 Defendant present  
 Richard Scott appearing for Defendant  
 Probation report filed  
 Court has read & reviewed report(s) & other documents.  
 Defendant having been convicted, COURT PRONOUNCES SENTENCE.  
 DEFENDANT SENTENCED  
 Imposition of Judgment Suspended  
 Defendant advised regarding appellate rights  
 Formal Probation Granted 24 Month(s)  
 Commence/cont. educ., counseling & other rehab programs as  
 directed by Prob.; not to leave w/o prior written consent  
 Complete 40 hrs. volunteer work thru So. Co. Volunteer Bureau to  
 the satisfaction of the Probation Officer and the Bureau's Director.  
 Register pursuant to 11590 H&S  
 Submit to warrantless search and seizure of person, property,  
 personal business or vehicle at any time day or night;  
 Submit to warrantless search/seizure of residence any time day or  
 reasonable hr. night by any Prob./Law Enforc. Off.  
 Submit to random chemical testing  
 Not possess or use controlled substances or associated  
 paraphernalia without valid prescription  
 Not consume or possess alcohol  
 Not be where alcohol is primary item of sale  
 Maintain employment or enroll in educational program  
 Not own, possess, have custody/control of firearms or ammunition  
 pursuant to Federal and State law  
 Be of good conduct and obey all laws  
 Pay drug prevention program fee \$150  
 Criminal Justice Administrative fee in the amount of \$189 to be  
 paid  
 Pay restitution fine of \$400 pursuant to 1202.4(a)(3)(b)  
 Pay report preparation fee \$250 through Probation (not a condition  
 of probation)  
 Pay cost of probation supervision at \$165 through Probation (not a  
 condition of probation)  
 All fines and fees to be paid as directed by Probation  
 COUNT II HS 11350(a) DISMISSED - OTHER  
 Report to Probation within 2 days of release from custody.  
 Sentenced to serve 6 months in Jail, 1 day credit for time served,  
 stayed until 1/03/2001 at 7:00 PM.  
 Report to North County Detention Facility

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09/12/2000 DE 1

AMENDED ORDER PURSUANT TO STIPULATION TO FORFEITURE FILED  
STIPULATION TO FORFEITURE OF PROPERTY FILED

11/21/2000 DE 1

STIPULATION TO FORFEITURE OF PROPERTY SUBJECT TO DISPOSITION FILED  
ORDER PURSUANT TO STIPULATION TO FORFEITURE FILED  
STIPULATION TO FORFEITURE OF PROPERTY SUBJECT TO DISPOSITION FILED

11/28/2000 DE 1

BAIL EXONERATED; REFERENCE #CS1000275689

12/08/2000 DE 1

CONTINUED TO - 12/11/2000 at 9:00am S4, MODIFICATION OF PROBATION,  
AT ATTORNEY'S REQUEST

12/11/2000 DE 1 Courtroom Minutes of Department S4

HON: Robert Boyd DDA: WILLIAM J. BROCKLEY REP: BONNIE PERRY CLK: MB  
Defendant present  
Richard Scott appearing for Defendant  
Discovery due: 12-22-2000 5:00 p.m.  
All other terms and conditions remain in full force and effect  
CONT/D TO - 01/05/2001 at 2:00pm S4, HEARING  
Hearing on medical marijuana use

12/14/2000 DE 1

AUTOMATED DL106 SENT TO DMV-SACRAMENTO

01/05/2001 DE 1 Courtroom Minutes of Department S4

HON: Robert Boyd DDA: WILLIAM J. BROCKLEY REP: ROSE FERRONATO CLK: MB  
Defendant is not present  
Richard Scott appearing for Defendant  
Modification of probation request is dropped from calendar.  
All other terms and conditions remain in full force and effect

01/28/2001 DE 1

AUTOMATED 8715 SUBSEQUENT ACTION ISSUED

04/09/2001 DE 1

AMENDEDED ORDER PURSUANT TO STIPULATION TO FORFEITURE FILED

01/09/2002 DE 1

CONTINUED TO - 01/10/2002 at 8:30am S4, MODIFICATION, AT  
DEFENDANT'S REQUEST

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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SONOMA

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01/10/2002 DE 1 Courtroom Minutes of Department S4

HON: Robert Boyd DDA: WILLIAM J. BROCKLEY REP: KAREN THOMPSON CLK: MB  
Probation Officer V. Starkey present  
Probation Officer V. Starkey gives Oral Report  
Defendant present  
Counsel R. Scott not present  
Case Referred to Probation Department for RPO  
Re: report re: defendant's performance on probation, if there has  
been any further criminal activity  
CONTINUED TO - 01/17/2002 at 8:30am S4, REPORT OF PROBATION OFFICER  
Report due 1-18-2002  
Defendant requests his probation be modified to delete the testing  
requirement

01/17/2002 DE 1 Courtroom Minutes of Department S4

HON: Robert Boyd DDA: WILLIAM J. BROCKLEY REP: ROSE FERRONATO CLK: MB  
Defendant present  
Counsel Richard Scott appearing  
Probation Officer V. Starkey gives Oral Report  
Probation Officer V. Starkey present  
Motion for Modification denied.  
All other terms and conditions remain in full force and effect

02/01/2002 DE 1

AUTOMATED 8715 SUBSEQUENT ACTION ISSUED

09/07/2002 DE 1

Formal Probation Term Expired

09/11/2002 DE 1

PROBATION MEMO FILED  
Probation Terminated

05/29/2003 DE 1

APPLICATION FOR EXPUNGEMENT PER PC 1203.4 FILED

06/17/2003 DE 1

ORDER GRANTING EXPUNGMENT AND CASE DISMISSED PER PC 1203.4 FILED  
AMENDED ABSTRACT SENT TO DMV-SACRAMENTO

06/19/2003 DE 1

AUTOMATED 8715 SUBSEQUENT ACTION ISSUED

\*\*\*\*\* End of Docket \*\*\*\*\*